

JDRN Country Report

Northern Ireland

1. Introduction to the country and its legal framework

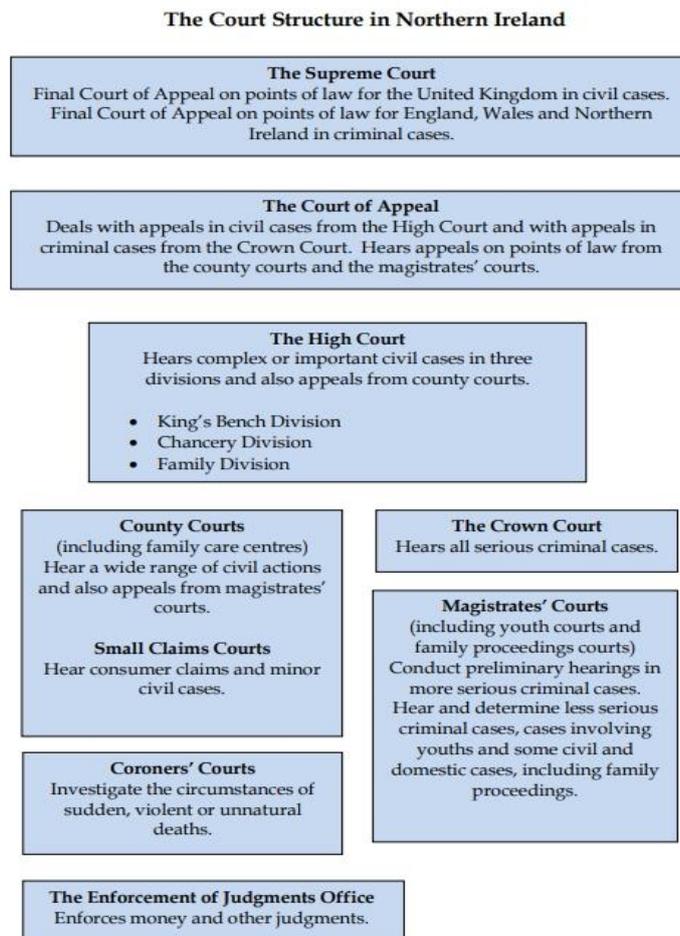
Overview of the country's legal system

- a. *What is the country's legal system based on? For example, is it based on the civil or common law system, or a hybrid of the two?*

The legal system in Northern Ireland is a common law system, meaning the law is declared by judges, derived from custom and precedent.

- b. *How are the courts structured? Are there specialist courts like family courts or constitutional courts?*

Different types of cases are dealt with in specific courts. The structure of the courts is shown in Figure 1 below:¹



¹ Figure 1: Diagram of the Court Structure in Northern Ireland. Available at: [Court Structure in Northern Ireland_1.pdf](#). Note, King's Bench Division includes Judicial Review and Commercial courts.

c. At which level of the judiciary is the JDR process or elements of that process implemented? To what extent is the JDR process implemented?

The JDR process is implemented via:

- Rules governing court procedures, see Rules of the Court of Judicature (NI) 1980, Order 1 Rule 1A which provides that the overriding objective of the Rules is to enable the court to deal with cases justly which includes dealing with cases fairly and in such a way as to save expense and time.
- Protocols, Practice Directions and Guidance expressly provide for Alternative Dispute Resolution i.e. Protocol for Clinical Negligence, paragraphs 14 and 15; Pre-action Protocol for Defamation, paragraphs 16 to 18; Commercial Hub Practice Direction, paragraph 24(f) and 35(c) and Ancillary Relief Guidance relating to Financial Dispute Resolution (“FDR”).
- ‘Soft’ JDR being used throughout the system, where judges use their judicial discretion to encourage alternative dispute resolution. The Jackson ADR Handbook has been made available in Northern Ireland by the NICTS to all judges dealing with civil work.

2. Objectives of the JDR process

a. What was the impetus for the introduction of the JDR process and the use of dispute resolution modalities?

There was no single impetus for the introduction of the JDR process and the use of dispute resolution modalities in Northern Ireland, however, the Report published by Sir John Gillen in 2017 following his review of Civil and Family Justice made a number of recommendations in relation to mediation and other forms of alternative dispute resolution which undoubtedly advanced the use of JDR processes in Northern Ireland.

b. What are the objectives and key outcomes of the JDR process?

The principal objective of the JDR process is to provide swift and cost-effective access to justice for suitable cases.

Key outcomes: The JDR process may lead to settlement. Even in cases that do not settle, it can help narrow the issues. JDR is a process the parties agree to, so they have ownership of it and there is a higher likelihood of satisfaction with the outcome. JDR can also assist in preserving the relationship between parties. If JDR is successful it benefits the system as a whole, not just the parties, as it frees up court resource which can be allocated elsewhere.

3. Legal framework for the JDR process

- a. *What is the source of the court's authority to implement the JDR process, including the use of dispute resolution modalities (e.g. legislation, rules of court, practice directions, convention, inherent case management powers, inherent jurisdiction of the court, case law etc)?*

Please see response to question 1(c) above.

In [Flynn v Chief Constable \[2018\] NICA 3](#) at para [36] the NI Court of Appeal noted "parties should be alert to the possibility of mediation as a means of resolution".

In [Re \(Rose\) Edmunds' Application for Judicial Review \[2019\] NIQB 50](#), the NI High Court noted at paragraph [17] "The virtues and advantages of mediation and other forms of alternative dispute resolution ("ADR") are now almost universally recognised". The court provided a useful analysis and commentary on alternative dispute resolution at paragraphs [17] to [39] noting *inter alia*; the Access to Justice Review (Northern Ireland) Report published in August 2011 notes that mediation is the principal form of ADR (para [17]); the availability of a menu of ADR mechanisms for use in differing types of legal dispute enhances access to justice (para [19]); the Bar of NI has the Barrister Mediation and Arbitration Service and the Law Society of NI provides an Law Society Mediation Service (para [23]).

- b. *Are there specific legislation, regulations or other guidelines to enable or allow the judge presiding over the JDR process to carry out judicial mediation, early neutral evaluation or employ other related JDR modalities (which traditionally are not regarded as part of the role of the judge)?*

Again, the response at question 1(c) above is relevant.

In Northern Ireland, Rules made under powers in primary legislation govern practice and procedure in different courts. For example, the Rules of the Court of Judicature (NI) 1980 ("RsCJ") apply to the Court of Appeal, High Court and County Courts; the Family Proceedings Rules (Northern Ireland) 1996 apply to Family

Courts; the Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (NI) 2020 (IT and FET Regulations) apply to Industrial and Employment Tribunals.

In addition to the overriding objective set out in Order 1 Rule 1A of RSCJ noted at 1(c) above, Order 1 Part III of the RSCJ sets out the rules concerning Mediation and Rule 20 provides for adjournment of proceedings to facilitate ADR.

The overriding objective in Order 1 Rule 1A of RSCJ is echoed in Schedule 1, Rule 1 of the IT and FET Regulations and Rule 3 encourages resolution of dispute by agreement.

The Ancillary Relief Guidance noted at para 1(c) above expressly states that the Master will assist the parties to settle the case.

4. Details of the JDR process

a. Description of the JDR process

What are the characteristics of the JDR process? Which dispute resolution modalities (e.g. early neutral evaluation, judicial mediation) are practised?

The types of dispute resolution modalities in Northern Ireland include:

- Early Neutral Evaluation (ENE) hearings: a hearing where parties appoint a neutral evaluator (may be a judge) to assess the strengths and weaknesses of each side's case. The evaluator does not decide legal issues or advocate a way of resolving matters. ENEs are usually engaged at an early stage in proceedings. If the case does not settle at this stage, any judge who has acted as the evaluator is excluded from any further involvement in the case. Parties can also appoint an evaluator on a private basis. See Practice Direction 01 of 2019 (Commercial Hub), paras 7 and 21(f) are particularly relevant to ENE.²
- Financial Dispute Resolution (FDR) Hearings: FDR is used in the initial stages of Ancillary Relief proceedings and are conducted by the Master (High Court Matrimonial) with the aim to hear the submissions of the parties and give an indication of the likely outcome to enable parties to settle on terms suggested thereby saving costs.³
- A Judicial Assessment and Mediation in Industrial Tribunals and Fair Employment Tribunal Pilot scheme is currently operational in NI and an

² [Practice Direction 01-19_2.pdf](#)

³ [Ancillary Relief | Department of Justice;](#)

evaluation of same was published in June 2024⁴. Judicial Assessment often occurs at the Case Management Preliminary Hearing where an employment judge impartially assesses the case. Outcomes include clarifying what the case is about and potential resolution of the case by agreement of parties. Judicial Mediation is also carried out on a voluntary basis with the option for parties to withdraw from mediation if so desired.

b. How is the JDR process carried out? Is the JDR process conducted online? Are technological tools used to facilitate the JDR process?

The JDR process can be carried out by telephone, video hearing or in person. Any decision on the mode of JDR process will take into account *inter alia*, the particular case, the parties involved, any request of the parties.

c. Do judges conduct early neutral evaluation and judicial mediation or are these outsourced to third parties?

The response at para 4(a) above is relevant.

Commercial Actions in the High Court have provided for Early Neutral Evaluation ('ENE') and the Practice Direction states that judges will be made available to conduct ENE, when possible, by furnishing an independent assessment of the case to assist the parties reach a settlement.

In FDR hearings, the initial hearings are carried out by Masters, who are responsible for exercising the jurisdiction of the High Court where jurisdiction does not fall to a judge.

Some examples of outsourced mediation include the Resolution Centre, a bespoke facility for ADR in Northern Ireland created with the assistance of the Bar of Northern Ireland. The Centre offers an opportunity for parties to determine their own solution facilitated by trained and accredited dispute resolution professionals via the Barrister Mediation and Arbitration Service.⁵ The Law Society of Northern Ireland also has a Mediation Service which provides contact details of local solicitor mediators trained to work with disputing parties. There is also the Family Mediation Northern Ireland which is funded by the Department of Health to provide mediation prior to cases coming to Court.⁶

⁴ [Evaluation of Judicial Mediation Scheme 1.pdf](#).

⁵ [The Resolution Centre Belfast](#)

⁶ [Family Mediation NI - Assisting families experiencing the trauma of separation](#)

d. Eligibility criteria for the JDR process

Is the JDR process mandatory or optional? Is it mandatory for certain types of disputes only?

In Northern Ireland, JDR is optional in all cases.

When would the court recommend JDR process to parties?

The decision to recommend JDR process to parties lies with the judge who will determine whether it is appropriate. Certain cases, for example where there is evidence of domestic violence, child protection concerns, risk to life, etc. will likely not be deemed suitable.⁷

e. Training of judges conducting the JDR process

The Lady Chief Justice is responsible for training the courts' judiciary in Northern Ireland. These responsibilities are exercised through the Judicial Studies Board. The Judicial Studies Board is responsible for producing an annual programme of judicial training.

f. Statistics on the JDR process

Statistics and other empirical and qualitative data on the effectiveness of the JDR process, e.g. percentage of cases disposed of through the JDR process, number of hearing days saved etc.

There are no formal publications of statistics relating to the effectiveness of the JDR process in Northern Ireland. However, the evaluation of the Judicial Mediation Scheme Pilot in the Industrial and Fair Employment Tribunals published in June 2024 notes that, of the 39 mediations which did take place, 79.5% of judicial mediations had a successful outcome, saving 225 hearing days.⁸

⁷ 'Alternatives to going to court', [Alternatives to going to court | nidirect](#).

⁸ [Evaluation of Judicial Mediation Scheme 1.pdf](#).